U.S. Citizenship and Immigration Services

STATEMENT

OF

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REGARDING A HEARING ON

"Is the Federal Government Doing all it Can to Stem the Tide of Illegal Immigration?"

BEFORE THE

HOUSE SUBCOMMITTEE ON REGULATORY AFFAIRS
COMMITTEE ON GOVERNMENT REFORM

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2154 Rayburn House Office Building

Madam Chairman, Ranking Member Lynch, and Members of the Subcommittee:

I. Introduction

I am honored to have this opportunity to talk with the Subcommittee about the U.S. Citizenship and Immigration Services' (USCIS) Basic Pilot Employment Verification Program (Basic Pilot), which provides information to participating employers about the work eligibility of their newly hired workers. I also will describe the agency's plans to improve and expand the Basic Pilot in preparation for a nationwide mandatory Employment Verification Program.

An Employment Verification Program is a critical step to improving worksite enforcement and directly supports the President's goal of achieving comprehensive immigration reform. In his speech to the U.S. Chamber of Commerce on June 1, President Bush endorsed the Basic Pilot as "a quick and practical way to verify Social Security numbers" that "gives employers confidence that their workers are legal, improves the accuracy of wage and tax reporting, and helps ensure that those who obey our laws are not undercut by illegal workers."

Clearly, if we are to control illegal immigration, we can't just focus on the border. Illegal immigrants are living and working in every state of the nation, and our solution must be just as comprehensive. We must make sure that our immigration laws are enforced in Michigan and Massachusetts and Georgia, not just along the southwest border. Today, an illegal immigrant with a fake ID and Social Security card can find work almost anywhere in the country without difficulty. It's the prospect of jobs that leads people to risk their lives crossing a hundred miles of desert or to spend years in the shadows, afraid to call the authorities when victimized by criminals or exploited by their boss.

That is why the Administration has proposed a comprehensive overhaul of the employment verification and employer sanctions program as part of the President's call for comprehensive immigration reform.

There is much we can do in advance of the enactment of comprehensive immigration reform. Here's what we are working on at USCIS to improve and expand the Basic Pilot:

- Ensuring that more aliens authorized to work have secure biometric cards.

- Accessing our card databases for verification of work authorization -- which will decrease the number of Basic Pilot queries that require a manual check.

- Streamlining the enrollment process for employers by making it completely electronic.

- Creating monitoring and compliance units that will search Basic Pilot and Employment Verification Program data for patterns to detect identification fraud and employer abuse.

The President's FY07 budget requests $110 million for expansion of the Basic Pilot to make it easier for employers to verify electronically the employment eligibility of workers. Based on our planning to date, we believe a feasible timetable allowing for phased-in expansion of mandatory verification along with flexible, user-friendly program requirements are essential to expand and operate the program as efficiently and effectively as possible.

We will also reach out to employers, including small businesses, for feedback and real-world input, such as ideas on the best ways to submit data on new hires with the least collective burden and how to make electronic employment verification as user-friendly as possible.

II. The Current Basic Pilot Program and Employment Verification Program

With that backdrop, I'd like to take this opportunity to outline how the current Basic Pilot works and the plans USCIS is putting in place to expand and improve it in preparation for a national mandatory program.

Congress established the Basic Pilot as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) in 1996, creating a program for verifying employment eligibility, at no charge to the employer, of both U.S. citizens and noncitizens. The Basic Pilot program began in 1997 as a voluntary program for employers in the five states with the largest immigrant populations -- California, Florida, Illinois, New York and Texas. In 1999, based on the needs of the meat-packing industry as identified through a cooperative program called Operation Vanguard, Nebraska was added to the list. The program was originally set to sunset in 2001, but Congress has twice extended it, most recently in 2003 extending its duration to 2008 and also ordering that it be made available in all 50 States. However, the program remains only voluntary, with very limited exceptions. A small percentage of U.S. employers participate, although the program is growing by about 200 employers a month to a current 10,000 agreements between USCIS and employers. These employers are verifying over a million new hires per year at more than 35,000 work sites.

We seek in operating the Basic Pilot program to encourage the voluntary participation of small businesses, and to be responsive to their needs and concerns. Most (87%) of our participating employers have 500 or fewer employees. Madam Chairman, in your state of Michigan, there are 168 participating employers, representing transportation, administrative and support services, food services, and plastics and rubber manufacturing industries. And Ranking Member Lynch, in Massachusetts, there are 335 participating employers, representing food services, government support, and retail businesses. We would welcome your support in reaching out to enroll even more employers in the program. Interested employers can register by going to our Basic Pilot Employer Registration Site at: https://www.vis-dhs.com/employerregistration.

<u>How the Basic Pilot Works</u>

After hiring a new employee, an employer submits a query including the employee's name, date of birth, Social Security account number (SSN) and whether the person claims to be a U.S. citizen or work-authorized noncitizen (for noncitizens, DHS issued identifying # is also submitted) and receives an initial verification response within seconds. For an employee claiming to be a U.S. citizen, the system transmits the new hire's SSN, name and date of birth to the Social Security Administration (SSA) to match that data, and SSA will confirm citizenship status on the basis of its Numident database. For the 88% of employees whose status can be immediately verified electronically, the process terminates here; in the remaining cases, the system issues a tentative nonconfirmation to the employer. The employer must notify the employee of the tentative nonconfirmation and give him or her an opportunity to contest that finding. If the employee contests the tentative nonconfirmation, he or she has eight days to visit an SSA office with the required documents to correct the SSA record.

Noncitizen employees face a more elaborate process. Once SSA verifies the name, date of birth, and SSN, the system will attempt to verify the person's work authorization status against the Basic Pilot database. (If a noncitizen's SSN information does not match, the individual is first referred to SSA) If the system cannot electronically verify the information, an Immigration Status Verifier will research the case, usually providing a response within one business day,[1] either verifying work authorization or, in 19 percent of cases, issuing a DHS tentative nonconfirmation. If the employer receives a tentative nonconfirmation, the employer must notify the employee and provide an opportunity to contest that finding. An employee has eight days to call a toll-free number to contest the finding and cannot be fired during that time because of the tentative nonconfirmation. Once the necessary information from the employee has been received, USCIS generally resolves the case within three business days,[2] by issuing either a verification of the employee's work authorization status or a DHS Final Nonconfirmation.

As you know, the House and Senate have both passed significant immigration legislation this Congress, including provisions that require a mandatory electronic employment eligibility verification program for all 7 million U.S. employers. Although the House and Senate provisions differ in some significant ways, both bills would require the eventual expansion to all U.S. employers of an Employment Verification Program generally modeled on the Basic Pilot.

USCIS is already planning for the expansion of the program. The President's FY07 budget request includes $110 million to begin expanding and improving the Basic Pilot, including conducting outreach, instituting systems monitoring, and compliance functions. USCIS is exploring ways to improve the completeness of the immigration data in the Basic Pilot database, including adding information about nonimmigrants who have extended or changed status and incorporating arrival information in real time from U.S. Customs and Border Protection. In addition, USCIS is enhancing the Basic Pilot system

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[1] Statistics gathered from the Basic Pilot database, Oct. 1, 2005 to March 31, 2006.
[2] Ibid.

to allow an employer to query by the new hire's card number, when that worker has a secure I-551 ("green card") or secure Employment Authorization Document. This enhancement will improve USCIS' ability to verify promptly the employment eligibility of noncitizens because the system will validate the card number against the repository of information that was used to produce the card, thereby instantly verifying all legitimate card numbers.

Planned Monitoring and Compliance Functions

No electronic verification system is foolproof or can fully eliminate document fraud, identity theft, or intentional violation of the required procedures by employers for the purpose of hiring unauthorized persons or keeping them on the payroll. But an Employment Verification Program that includes all U.S. employers, along with monitoring and compliance functions and a fraud referral process for potential ICE Worksite Enforcement cases, can substantially deter and detect the use of fraud by both employers and employees as the Administration works to strengthen its overall interior enforcement strategy.

The current Basic Pilot is not fraud-proof and was not designed to detect identity fraud. In fact, a recent analysis of Basic Pilot systems data found multiple uses of certain I-94 numbers, A-numbers, and SSNs in patterns that could suggest fraud. As currently envisioned, the Employment Verification Program will include robust processes for monitoring and compliance that will help detect and deter the use of fraudulent documents, imposter fraud, and incorrect usage of the system by employers (intentionally and unintentionally). USCIS will forward enforcement leads to ICE Worksite Enforcement in accordance with referral procedures developed with ICE. The monitoring unit will scrutinize individual employers' use of the system and conduct trend analysis to detect potential fraud. Findings that are not likely to lead to enforcement action (e.g., a user has not completed training) will be referred to USCIS compliance officers for follow-up. Findings concerning potential fraud (e.g., SSNs being run multiple times in improbable patterns; employers not indicating what action they took after receiving a final nonconfirmation) will be referred to ICE Worksite Enforcement investigators.

It is essential that DHS have the authority to use information arising from the Employment Verification Program to enforce our Nation's laws, including prosecuting fraud and identifying and removing criminal aliens and other threats to public safety or national security. It is also important that the system contain security and other protections to guard personal information from inappropriate disclosure or use, and to discourage use of the system to discriminate unlawfully or otherwise violate the civil rights of U.S. citizens or work-authorized noncitizens.

Planning for the Employment Verification Program

We are confident in our ability to get a substantially expanded Employment Verification Program operational with the President's budget request.

The Administration supports a phased-in Employment Verification Program implementation schedule on a carefully drawn timeframe to allow employers to begin using the system in an orderly and efficient way. We favor having the discretion to phase in certain industry employers ahead of others. As noted elsewhere in my testimony, USCIS already is working to improve and expand the Basic Pilot program to support the proposed expansion.

USCIS is also committed to constructing a system that responds quickly and accurately. In order for this system to work, it must be carefully implemented and cannot be burdened with extensive administrative and judicial review provisions that could effectively tie the system, and DHS, up in litigation for years.

III.   Improved Documentation

In the President's May 15, 2006 address to the nation on comprehensive immigration reform, he indicated that businesses often cannot verify the legal status of their employees because of widespread document fraud. We need, he said, "a better system for verifying documents and work eligibility. A key part of that system should be a new identification card for every legal foreign worker. This card should use biometric technology…to make it tamper-proof. A tamper-proof card would help us enforce the law, and leave employers with no excuse for violating it."

Many foreign workers already possess a secure, biometric card evidencing their immigration status as either an immigrant (an I-551 card, commonly known as a "green card") or a work-authorized nonimmigrant (an Employment Authorization Document or EAD). Some nonimmigrants currently have non-secure EADs, but USCIS is planning to eliminate the issuance of these cards in favor of secure cards. In addition, USCIS is considering requiring more classes of work-authorized nonimmigrants to obtain a secure EAD. Requiring all work-authorized nonimmigrants to obtain secure documentation would help ensure that their work eligibility can be instantly verified in the Basic Pilot or Employment Verification Program. As I discussed previously, USCIS already is developing the system capability to verify a new hire's immigration card number against the card information repository. Under this new system, a legitimate card number matched with a name and date of birth will electronically verify in a matter of seconds – and only a fraudulent card would fail to verify.

IV.   Conclusion

We in USCIS are in a unique position to understand the importance of having legal means for individuals to enter and work in the United States. That is why we, and the President, support comprehensive immigration reform that includes interior and border enforcement in addition to a temporary worker program.

We thank both the House and the Senate for recognizing the need for change in this area. With a strong cooperative effort now, the prospect of a truly effective national mandatory Employment Verification Program, combined with improved documentation, will reduce pressure on border and interior enforcement, simplify today's processes, put employers

on an equal footing, and support a temporary worker program that is vital to our economy.

Thank you and I look forward to answering your questions.